

**Velva L. Price
District Clerk
Travis County
1-GN-18-001605
Sandra Santos**

NO. D-1-GN-18-001605

MARCEL FONTAINE,
Plaintiff,

V.

ALEX E. JONES, INFOWARS, LLC,
FREE SPEECH SYSTEMS, LLC and
KIT DANIELS,
Defendants

DEFENDANTS' FIRST AMENDED ANSWER

Defendants Infowars, LLC, Free Speech Systems, LLC (“Free Speech Systems”) and Kit Daniels (collectively, the “Defendants”), hereby file this First Amended Answer and would respectfully show the Court the following:

I. GENERAL DENIAL

1. Defendants generally deny, each and every, all and singular, the allegations contained in Plaintiff's Original Petition, and request strict proof thereof.¹ Defendants reserve the right to amend their Answer in conformity with the Texas Rules of Civil Procedure.

II. AFFIRMATIVE DEFENSES

2. Plaintiff's defamation causes of action (and derivative causes of action, to the extent that they are based upon the alleged defamation) are barred, in whole or in part, under Texas Civ. Practice and Remedies Code § 73.005. Under that section, the defense of "truth" applies to a "newspaper or other periodical" that accurately reports allegations made by a third party regarding a matter of public concern. Defendant Free Speech Systems is a "newspaper or

1 The Original Petition contains a litany of irrelevant, inflammatory and baseless allegations (see e.g. Original Petition ¶¶ 9-22) concerning matters that have absolutely no bearing on Plaintiff's actual causes of action (which are predicated on Free Speech Systems' publication of a photograph allegedly of Plaintiff (the "Challenged Image") on the InfoWars website - which photograph was voluntarily removed within 13 hours of its original publication). Defendants reserve the right to move to strike or otherwise challenge these immaterial and inflammatory allegations.

other periodical" within the meaning and scope of §73.005 (as demonstrated by the statute and common law). The challenged publication (i.e. the Challenged Image and accompanying text) was an accurate reporting of allegations made by one or more third parties regarding a matter of public concern (i.e. the Parkland, Florida shooting) regarding breaking news. As such, Defendant Free Speech Systems (and its employee Daniels) are entitled to the statutory protection of this defense.

3. Plaintiff's causes of action are barred, in whole or in part, because Plaintiff failed to mitigate his damages and pursuant to the mitigating factors set forth in Tex. Civ. Prac & Rem. Code § 73.003. Under that statute, Defendants are entitled to introduce evidence that they made a public apology, correction and retraction of the allegedly defamatory statement. They are also entitled to introduce all material facts and circumstances surrounding the claim for damages and defenses to the claim, the facts and circumstances under which the allegedly defamatory statement was made (such as Mr. Daniels' reliance upon third-party sources in making the alleged statement), and evidence of the intention with which the allegedly defamatory statement was made (such as Mr. Daniels' then real-time belief as to the truthfulness of the allegedly defamatory statement).

4. Plaintiff's damages claims are barred, in whole or in part, because Plaintiff's own acts or omissions, or those acts or omissions of third-parties, caused or contributed to Plaintiff's alleged injury. For example, Free Speech Systems' original publication of the Challenged Image never identified the man appearing in the photograph as the Plaintiff. Plaintiff's filing of this suit has created or contributed to his alleged harm since he has now publicized (and thereby publically associated) the Challenged Image with his name.

5. Plaintiff's derivative causes of action (for conspiracy and "respondent superior") are barred, in whole or in part, on the same grounds that his direct causes of action are barred (as set forth herein).

6. Plaintiff's claim for exemplary damages is barred, in whole or in part, under the Texas Defamation Mitigation Act (in light of Free Speech Systems' correction, clarification or retraction) and pursuant to the statutory caps outlined in Section 41.008 of the Texas Civil Practice & Remedies Code.

7. Defendants also reserve the right to assert additional defenses. Defendants further reserve the right to assert any and all additional claims, to amend the Answer, and to file further pleadings.

III. PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that Plaintiff be denied any relief as requested in his Original Petition, that Plaintiff take nothing on his claims, that Defendants be awarded their attorneys' fees under applicable law, and the Court grant them such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP
100 Congress Avenue, Suite 1800
Austin, Texas 78701
Telephone: (512) 685-6400
Telecopier: (512) 685-6417

By:/s/ *Eric J. Taube*

Eric J. Taube
Texas State Bar No. 19679350
Kevin W. Brown
Texas State Bar No. 24045222
kevin.brown@wallerlaw.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the parties listed below via email on June 14, 2021:

Mark Bankston
Bill Ogden
Kaster, Lynch, Farrar & Ball, LLP.
1010 Lamar, Suite 1600
Houston, Texas 77002

/s/ Eric J. Taube
Eric J. Taube

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Eric Taube
 Bar No. 19679350
 eric.taube@wallerlaw.com
 Envelope ID: 54375667
 Status as of 6/15/2021 11:22 AM CST

Associated Case Party: Marcel Fontaine

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------|-----------------------|--------|
| Mark Bankston | 24071066 | mark@fbtrial.com | 6/14/2021 10:59:21 AM | SENT |

Associated Case Party: AlexE.Jones

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|-----------------------|--------|
| Eric J.Taube | | eric.taube@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |
| Kevin Brown | | kevin.brown@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |

Associated Case Party: Kit Daniels

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|-----------------------|--------|
| Eric J.Taube | | eric.taube@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |
| Kevin Brown | | kevin.brown@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |

Associated Case Party: InfoWars, LLC

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|-----------------------|--------|
| Eric J.Taube | | eric.taube@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |
| Kevin Brown | | kevin.brown@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |

Associated Case Party: Free Speech Systems, LLC

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|-----------------------|--------|
| Eric J.Taube | | eric.taube@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |
| Kevin Brown | | kevin.brown@wallerlaw.com | 6/14/2021 10:59:21 AM | SENT |

Automated Certificate of eService

This automated certificate of service was created by the efilings system. The filer served this document via email generated by the efilings system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Eric Taube
Bar No. 19679350
eric.taube@wallerlaw.com
Envelope ID: 54375667
Status as of 6/15/2021 11:22 AM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------|-----------------------|--------|
| Kyle WFarrar | | kyle@fbtrial.com | 6/14/2021 10:59:21 AM | SENT |
| William Ogden | | bill@fbtrial.com | 6/14/2021 10:59:21 AM | SENT |